

**GENERAL NJPDES-DSW PERMIT TO DISCHARGE STORMWATER FROM
CONSTRUCTION INTO THE SURFACE WATERS OF THE
STATE OF NEW JERSEY
Draft**

**Draft Renewal of Permit No. NJG0088323
Fact Sheet**

The New Jersey Department of Environmental Protection (Department) currently regulates stormwater runoff from certain construction activities under its Construction Activity Stormwater General Permit (NJPDES Permit No. NJ0088323). This general permit controls stormwater discharge to surface water (DSW) from certain construction activities, including clearing, grading, and excavation (generally, construction activities that disturb one acre or more of land, or disturb less than one acre but are part of a larger plan of development or sale). The most recent version of this general permit was issued on March 1, 2007 and modified effective August 17, 2009, and will expire February 29, 2012. It is being renewed with the modifications summarized below in the Basis For Modified Permit Conditions.

BACKGROUND

The New Jersey Department of Environmental Protection (Department) is the issuing authority for NPDES permits in the State of New Jersey, and issues those permits under the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.) as part of the New Jersey Pollutant Discharge Elimination System (NJPDES). As a response to the publication of the USEPA "Phase I" stormwater discharge regulations, the Department first issued the "construction" stormwater general permit, for stormwater discharges from certain construction, mining, and quarrying activities, in 1992 and revoked and reissued that general permit in 1997, as part of the NJPDES rules, N.J.A.C. 7:14A. The general permit was issued by the Department, but requests for authorization (RFAs) under the general permit are certified by individual Soil Conservation Districts within New Jersey, or by the New Jersey Department of Transportation (DOT). For a more thorough discussion of the background and conditions of the general permit issued in 1992 and reissued in 1997, see the Department's Fact Sheets for the draft general permit (dated June 5, 1992 and February 5, 1996), and the New Jersey Register notices for the proposal and adoption of NJPDES rule changes (see 24 N.J.R. 2352(a), 4088(a), 4364(a), 4522(a), 25 N.J.R. 687(a) 28 N.J.R. 320(a), and 29 N.J.R. 1704(a) and 3822(a)).

Effective January 22, 2002, the text of the general permit was removed from the NJPDES rules (through the deletion of N.J.A.C. 7:14A-11.5(j) and the repeal of N.J.A.C. 7:14A-11 Appendix B; see 33 N.J.R. 3636(a), 34 N.J.R. 595(a)). The general permit was renewed on March 1, 2002 (with the same conditions but in a revised format). The general permit was modified effective March 3, 2004 primarily to implement some of USEPA's "Phase II" stormwater regulations and related amendments to the NJPDES rules. For further discussion of the background and conditions of the modification effective March 3, 2004, see the Department's Fact Sheet and response to comments document for that

modification, and the New Jersey Register notices for the proposal and adoption of NJPDES rule changes (35 N.J.R. 169(a) and 36 N.J.R. 813(a)).

Effective March 1, 2006 the general permit was modified to exclude permit eligibility for mining and quarrying operations, to authorize and regulate single family home construction that requires a NJPDES stormwater permit but is not within the Soil Erosion and Sediment Control Act definition of "project," to implement certain provisions of the Highlands Water Protection and Planning Act Rules that became effective on May 9, 2005, and to clarify how authorizations under this general permit cease to be effective.

The general permit was again modified effective August 17, 2009 to include requirements for electronic permit authorizations and to make other necessary corrections. The electronic permitting process has been in service since October, 2009.

The permit action now proposed by the Department is a renewal of the general permit (NJG0088323). The renewal permit is presented with changes regarding permit eligibility, application requirements, recently adopted federal numeric and non-numeric effluent limitations, inspections and reporting, and various corrections to better incorporate the electronic permit process into the permit.

As provided at N.J.A.C. 7:14A-16.3(e) the entire permit shall be reopened for notice and comment.

TYPE OF FACILITY OR ACTIVITY

This general permit controls stormwater discharge to surface water (DSW) from certain construction activities, including clearing, grading, and excavation (generally, construction activities that disturb one acre or more of land, or disturb less than one acre but are part of a larger plan of development or sale). As discussed below this permit is being modified to allow discretion by the Department to authorize construction activities at landfill sites that presently do not meet the eligibility requirements in the existing permit.

TYPE AND QUANTITY OF POLLUTANTS DISCHARGED

On a facility-by-facility basis, the type and quantity of pollutants discharged under this draft general permit modification is similar to the type and quantity of pollutants discharged under the general permit issued on May 5, 1997, renewed on March 1, 2002 and modified on March 3, 2004 and March 1, 2006. For further discussion, see the February 5, 1996 Fact Sheet.

SUMMARY AND BASIS FOR MODIFIED PERMIT CONDITIONS

Eligibility

Part I A 2a.i. has been modified to expand permit eligibility that would allow discretion by the Department to authorize construction at any landfill when a determination is made that the permit requirements will protect the quality of the waters of the State. On a case-

by-case basis the Department will request and review all relevant information required to evaluate the proposed construction activity and the character of any stormwater discharges that may occur during construction. The evaluation will consider the type of waste material deposited at the landfill, analytical data that characterizes the pollutants that may be discharged, the extent of the disturbance and exposure of the waste material, proposed construction sequence, and the proposed waste material handling during construction. Authorization under the Construction Activity Stormwater General Permit will only be issued if a determination is made by the Department that the requirements in that permit will protect the quality of waters of the State and the issuance of any other permit would contain the same requirements.

Authorization

Part I C.1.a. has been modified to delete the reference to the soil conservation district and New Jersey Department of Transportation (DOT) RFA Certification and the anticipated activation date of the E-permitting system.

Request for Authorization

Part I D.1 has been modified to delete the thirty (30) day requirement for submitting the RFA prior to construction for RFAs submitted electronically.

Part I D. 2 has been modified to delete the reference to the soil conservation district and DOT and the anticipated activation date of the E-permitting system. The E-permitting system was implemented in October, 2009. As a result the soil conservation district or DOT no longer accepts the RFA.

Part I D. 4.a., Contents of the Request for Authorization, has been modified to delete the use of a RFA form and require that all requests for authorization be made using the E-permitting system. The Department is now proposing to fully automate the RFA process for the Construction Activity Stormwater General Permit by requiring electronic applications only. In limited circumstances, and at the request of the applicant, a RFA with the required payment using forms provided by the Department may be accepted. This change is being made to support the Department's efforts to function in a totally paperless environment. The E-permitting system has been in use since October, 2009. Since that time the Department has processed over 2,000 RFAs. Initially, approximately one half of the RFAs processed were received on paper forms through the mail. The number of paper submissions has steadily declined where more than 90% of the RFAs now being processed are received through the E-permitting system.

Part I D. 5.b., Where to Submit, has been modified to add discretionary language in 5.b.i. to allow RFA submissions without using the E-permitting system. As discussed above the applicant must make a request to the Department to submit a RFA using an alternative method. If approved the completed RFA with payment must be submitted as instructed using the forms provided by the Department. All other forms and application not approved will be rejected.

Effluent Limitation, Inspections and Reporting Requirements

Part I E. 1.b. has been modified to add new federal requirements that establish minimum non-numeric soil erosion and sediment control standards. Including these requirements in the permit will insure compliance between the soil erosion and sediment control plan certified pursuant to N.J.S.A. 4:24-23 and the federal effluent limitation guidelines adopted by the U.S. Environmental Protection Agency (40 CFR Part 450.21). The major difference between New Jersey's soil erosion and sediment control standards and the minimum standards adopted EPA concerns the time interval that soil stabilization must be initiated when construction activity ceases temporarily in excess of 14 days on any portion of the site. The State standard is 30 days.

Part I E.1.b has been changed to 1.c and 1.c.has been changed to 1.d. as a result of the changes made to include the minimum standards in 1.b.

Part I E.3.a., Routine Inspections, has been modified to allow permittees the ability to seek a suspension of the routine inspections when construction activities have ceased for 6 months. The request for suspension must be made to the soil conservation district overseeing the project and approved in writing. The Department is making this change to eliminate unnecessary and, often burdensome requirements on permittees at sites where there is no construction activity and the area meets stabilization standards with no risk for sedimentation or erosion problems.

Attachment B: Construction Site Waste Control Component of the Stormwater Pollution Prevention Plan (SPPP)

Part 1 J.3., Waste Handling, has been modified to remove the requirement that waste containers must be fitted with lids or covers. The Department has determined that this requirement is too prescriptive and is not practical at all project sites where containers must remain open for access to conduct daily operations. The new requirement establishes a performance standard to control waste material to prevent material from overflowing, leaking, or blowing out of containers. It will be the responsibility of the permittee to determine if a lid or cover is needed to meet this requirement.

Part J.4 b, Concrete Truck Washout, has been modified to expand the uses of the area to include all concrete wash waste produced on site. The new requirement eliminates "truck" from the term "concrete truck washout" and incorporates signing requirements for the area.

Attachment C: Individual Home Construction Stabilization Plan, IHCPs)

Part 1. K.2.c. ii, Stockpile Stabilization, has been modified to change the requirement to stabilize soil stockpiles that are exposed for from more than thirty (30) days to fourteen (14) days. This change is being made to be consistent with the new federal non-numeric minimum standards identified in Part 1. E.b. above.

PROCEDURES FOR REACHING FINAL DECISIONS ON THE DRAFT PERMIT MODIFICATION

The public notice includes requirements for the submission of comments to the Draft Permit modification, procedures for requesting a hearing, and other procedures for participation in the final agency decision, as set forth in N.J.A.C. 7:14A-15. The comment period will begin on the date the public notice appears in the December 21, 2011 New Jersey Bulletin or the date it appears in the Star Ledger, Courier Post or the New Jersey Herald, whichever is latest. The public comment period will remain open for 30 days from the latest date of publication but may be extended if public interest warrants.

DEPARTMENT CONTACT

Additional information concerning the Draft Permit modification may be obtained between the hours of 9:00 A.M. and 5:00 P.M., Monday through Friday from the Bureau of Nonpoint Pollution Control at (609) 633-7021 or (609) 292-7026.

CONTENTS OF THE ADMINISTRATIVE RECORD

The provisions of the Draft Permit modification (a type of “draft permit” as defined at N.J.A.C. 7:14A-1.2) are based on the following items:

1. The draft modification, issued October 19, 2005, to the Construction Activity Stormwater General Permit, NJPDES Permit No. NJ0088323 (“Draft Permit modification”)
2. The public notice of that “Draft Permit modification”
3. The fact sheet for that “Draft Permit modification”
4. NJPDES Permit No. NJ0088323, modified effective March 3, 2004
5. Fact sheets, dated June 5, 1992, February 5, 1996, and October 28, 2003, for the draft issuance, reissuance, and modification of NJPDES Permit No. NJ0088323 (NPI)*
6. Federal Clean Water Act, 33 U.S.C. §§ 1251 et seq. (NPI)*
7. 40 CFR 122, 123, and 124 (NPI)*
8. New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. (NPI)*
9. Soil Erosion and Sediment Control Act (“Chapter 251”), P.L. 1975, c.251, as amended, N.J.S.A. 4:24-39 et seq. (NPI)*
10. Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et seq. (NPI)*
11. State Uniform Construction Code Act (P.L. 1975, c.217, as amended; N.J.S.A. 52:27D-119 through 141) (NPI)*
12. N.J.A.C. 2:90-1, 5:23, 7:14A, and 7:38 (NPI)*
13. All Federal Register and New Jersey Register notices cited in the fact sheet for the “Draft Permit modification” issued October 19, 2005 (NPI)*
14. Fact sheet for draft Mining and Quarrying Stormwater General Permit (NJPDES Permit No. NJ0141950) issued September 2, 2004 (NPI)*
18. Standards for Soil Erosion and Sediment Control in New Jersey, July 1999 (cited in N.J.A.C. 2:90-1.3) (NPI)*
19. State Soil Conservation Committee New Jersey Soil Conservation Districts’ Chapter 251, P.L. 1975 Administrative Policy and Procedure Manual, July 12, 2004 (NPI)*

*NPI: The document is part of the administrative record, but is not physically included with the record.